

# EXHIBIT 15

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 CASE NO. 1:21-CV-07100-AKH

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4 GEORGE STEINMETZ,  
5 Plaintiff,  
6 vs.  
7 SHUTTERSTOCK, INC. and  
8 DOES 1-10, inclusive,

9  
10 Defendants.

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30(b)(6) DEPOSITION VIA ZOOM OF  
SHUTTERSTOCK, INC. by and through  
ARTUR ZAMBROWSKI  
July 14, 2022

23 Reported by:  
24 SARA FREUND, CSR  
25

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10 July 14, 2022

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10:00 a.m.

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30(b)(6) DEPOSITION VIA ZOOM OF  
ARTUR ZAMBROWSKI, held on the above mentioned  
date and time, before Sara Freund, a  
Certified Shorthand Reporter and Notary  
Public within and for the State of New York.

1 A P P E A R A N C E S :

2  
3 DONIGER/BURROUGHS LAW FIRM

4 Attorneys for Plaintiff  
5 247 Water Street - first floor  
6 New York, New York 10038  
7 BY: SCOTT A. BURROUGHS, ESQ.  
8 LAURA M. ZAHARIA, ESQ.

9 MITCHELL SILBERBERG & KNUPP LLP

10 Attorneys for Defendant  
11 437 Madison Avenue - 25th floor  
12 New York, New York 10022  
13 BY: ELEANOR M. LACKMAN, ESQ.  
14 SAMANTHA W. FRANKEL, ESQ.

15 ALSO PRESENT:

16 Andrew Raff - inhouse counsel, Shutterstock

17  
18  
19  
20  
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23  
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25

1 A. ZAMBROWSKI

2 A. No.

3 Q. In your work at Shutterstock, have  
4 you ever gone by a fake name online?

5 A. Yes. I used an alias.

6 Q. What aliases have you used?

7 A. I've used [REDACTED] for the most part of  
8 my career at Shutterstock.

9 Q. Have you used any other aliases?

10 A. No.

11 Q. Why do you use an alias?

12 A. I use an alias just to stay  
13 anonymous. I do not want individuals  
14 reaching out to me on social media platforms.  
15 I don't want them to connect with me to try  
16 to solve issues; I would rather them contact  
17 Shutterstock directly.

18 Q. Is that a decision you personally  
19 made, or is that Shutterstock policy?

20 A. That is something my team has  
21 decided to do.

22 Q. Who is on your team?

23 A. My current IT team is Andrew Raff  
24 and Heather Shimmin.

25 Q. Can you spell those names for me?

**Redaction per Defendant's request.**

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1 A. ZAMBROWSKI

2 A. I don't know.

3 Q. Do you know why she left  
4 Shutterstock?

5 A. She got another opportunity, another  
6 challenge she wanted to tackle.

7 Q. Have you learned of any other reason  
8 why she left Shutterstock?

9 A. No.

10 Q. Do you know where she works now?

11 A. Yes.

12 Q. Where does she work now?

13 A. MMHMM is the name of the company,  
14 M-M-H-M-M.

15 Q. Do you know which office she's in,  
16 if she's in an office?

17 A. No.

18 Q. So was it Ms. Patel that told you to  
19 use a fake name when dealing with  
20 Shutterstock business?

21 MS. LACKMAN: Objection to the  
22 extent it reveals privileged information.  
23 I just want to be cautious. You can  
24 answer if you know yes or no; please  
25 don't elaborate. We'll take this one

1 A. ZAMBROWSKI

2 step at a time.

3 A. Yes.

4 Q. When she told you to use a fake name  
5 online, did she give you any other  
6 instructions?

7 A. No.

8 Q. When you were using a fake name on-  
9 line for Shutterstock business, who were you  
10 communicating with?

11 MS. LACKMAN: Objection, vague.

12 Q. Go ahead.

13 A. With various individuals, copyright  
14 owners, models, contributors, customers.

15 Q. Were some of the folks that you  
16 communicated with when using the fake name  
17 copyright holders who believed that  
18 Shutterstock was displaying their work  
19 without consent?

20 MS. LACKMAN: Objection, vague.

21 Q. Go ahead.

22 A. Yes.

23 Q. Is the Shutterstock policy regarding  
24 using these fake names when dealing with  
25 copyright holders in writing anywhere?

1 A. ZAMBROWSKI

2 A. I do not know.

3 Q. Does Shutterstock work with a  
4 company named HelloRF?

5 A. I do not know.

6 Q. Does Shutterstock work with a  
7 company named TinEye?

8 MS. LACKMAN: Objection, vague.

9 A. I believe so.

10 Q. How long has Shutterstock worked  
11 with TinEye?

12 A. I do not know.

13 Q. Is Shutterstock currently working  
14 with TinEye?

15 A. I do not know.

16 Q. Did Shutterstock distribute to  
17 TinEye a copy of the photograph at issue in  
18 this case?

19 MS. LACKMAN: Objection, calls for a  
20 legal interpretation, outside the scope.

21 Q. Go ahead.

22 A. TinEye does not obtain any content  
23 from Shutterstock.

24 Q. Has a Shutterstock photograph with  
25 Shutterstock branding ever appeared on

1 A. ZAMBROWSKI

2 TinEye, to your knowledge?

3 A. Yes.

4 Q. How did that happen?

5 MS. LACKMAN: Objection, calls for  
6 speculation, outside the scope.

7 A. Because TinEye is a reverse image  
8 software that populated images found on the  
9 web.

10 Q. When it does that, does it ever  
11 include Shutterstock branding?

12 MS. LACKMAN: Objection, vague,  
13 calls for speculation.

14 Q. Go ahead.

15 A. What type of branding?

16 Q. Name and logo?

17 A. Yes.

18 Q. And does the TinEye page also  
19 display advertising for Shutterstock in  
20 connection with the image?

21 MS. LACKMAN: Objection, vague,  
22 outside the scope.

23 A. Yes.

24 Q. Do you know if TinEye displayed the  
25 photograph at issue in this case?

1 A. ZAMBROWSKI

2 Q. Go ahead.

3 A. I believe I answered that they're a  
4 reverse image platform.

5 Q. Other than what the company is, are  
6 you aware of anything related to the  
7 relationship between Shutterstock and TinEye?

8 MS. LACKMAN: Objection foundation.

9 A. I do not know.

10 Q. Does Shutterstock take any action to  
11 ensure that its photography shows up on  
12 TinEye?

13 A. I do not know.

14 Q. Assuming that TinEye does display  
15 Shutterstock photography, how does that  
16 happen?

17 MS. LACKMAN: Objection, very broad,  
18 calls for speculation. You can answer if  
19 you know.

20 A. Like I mentioned, they're a reverse  
21 image search platform, they search the entire  
22 worldwide web, so they will pull Shutterstock  
23 imagery, Getty images or any which platform  
24 or even personal blogs or websites that would  
25 be populated there.

1 A. ZAMBROWSKI

2 Q. So other than the fact that it's a  
3 search engine, do you know anything about how  
4 the Shutterstock photography shows up on  
5 TinEye?

6 MS. LACKMAN: Objection, asked and  
7 answered multiple times.

8 Q. Go ahead.

9 A. TinEye pulls any information on the  
10 worldwide web based on the input we give it.

11 Q. Does Shutterstock provide any input  
12 or material that allows TinEye to pull  
13 Shutterstock photography?

14 A. Only to put in images that are  
15 currently on Shutterstock.

16 Q. What is that?

17 A. I'm not sure of the question.

18 MS. LACKMAN: And, again, it's going  
19 outside the scope about how TinEye works.

20 Q. When you say TinEye receives  
21 something from Shutterstock to ensure that  
22 the Shutterstock photography appears on  
23 TinEye, what are you referring to?

24 MS. LACKMAN: Objection, misstates  
25 the testimony.

1 A. ZAMBROWSKI

2 MS. LACKMAN: Objection, vague as to  
3 time, outside the scope.

4 A. I don't know.

5 Q. Do you know if the photograph at  
6 issue in this case appeared on any site other  
7 than Shutterstock due to involvement between  
8 that site and Shutterstock?

9 MS. LACKMAN: Objection, calls for  
10 speculation.

11 A. Can you repeat the question? I'm  
12 not sure I understand.

13 Q. Sure. Let me back up briefly. The  
14 photograph that's at issue in this case, did  
15 it ever show up on Shutterstock?

16 A. Yes.

17 Q. Did Shutterstock display that  
18 photograph and offer to license it to its  
19 clients?

20 MS. LACKMAN: Objection, calls for  
21 legal interpretation, asked and answered.

22 Q. Go ahead.

23 A. Yes.

24 Q. And other than that use of the image  
25 on Shutterstock's website, are you aware of

1 A. ZAMBROWSKI

2 the photograph at issue appearing on any  
3 other website through involvement between  
4 that site and Shutterstock?

5 MS. LACKMAN: Objection, no

6 foundation.

7 A. I don't know.

8 Q. Have you ever looked through your  
9 records to see if the photograph appeared on  
10 any other sites due to a relationship between  
11 that site and Shutterstock?

12 A. Personally, I have not.

13 Q. Do you know if anyone at  
14 Shutterstock has?

15 A. I do not know.

16 Q. Looking again at Exhibit 1 here, did  
17 you have any involvement with the selection  
18 of payment, modification, incorporation or  
19 publication of the Steinmetz photograph at  
20 issue?

21 MS. LACKMAN: Objection, compound,  
22 subject to the same objection I made  
23 earlier regarding scope.

24 A. No.

25 Q. Did you approve the Steinmetz

1 A. ZAMBROWSKI

2 complaint.

3 Q. Go ahead.

4 A. Could you describe what photograph?

5 Q. The photograph alleged to be used  
6 without consent by Shutterstock.

7 A. I'm still not sure I understand the  
8 question. Can you rephrase it?

9 Q. Sure. Are you aware that there is a  
10 photographer who claims that Shutterstock  
11 used his photograph without consent?

12 A. Yes.

13 Q. Who at Shutterstock approved the  
14 publication of that photograph?

15 MS. LACKMAN: Same objection,  
16 compound, assumes -- there's just no  
17 foundation.

18 A. One of our viewers.

19 Q. Do you know who?

20 A. Personally, no.

21 Q. Have you ever looked to find out who  
22 that was?

23 A. I've seen their name by looking up  
24 this image in particular when we removed the  
25 content.

1 A. ZAMBROWSKI

2 Q. Do you recall what the name was?

3 A. No, I do not.

4 Q. When did you look in the system?

5 A. I don't remember.

6 Q. Was it in the last couple of weeks?

7 A. I do not remember.

8 Q. Was it within the last year?

9 A. I do not remember.

10 Q. But it's Shutterstock's

11 understanding that someone at Shutterstock  
12 approved the photograph at issue in this case  
13 before it was displayed on the E-  
14 Shutterstock website, correct?

15 MS. LACKMAN: Objection, calls for a  
16 legal interpretation.

17 A. Correct. It was reviewed by a  
18 reviewer and determined to be visible on  
19 Shutterstock's website.

20 Q. Did you ever review such photography  
21 before it's distributed or displayed on the  
22 website?

23 MS. LACKMAN: Objection, vague to as  
24 to review.

25 A. No.

1 A. ZAMBROWSKI

2 Q. How many reviewers does Shutterstock  
3 currently have?

4 A. I do not know the exact number.

5 Q. More than ten?

6 A. I do not know.

7 Q. More than a hundred?

8 A. I do not know.

9 Q. Less than ten?

10 A. I do not know.

11 Q. Do you know if Shutterstock has any  
12 reviewers?

13 A. Yes.

14 Q. How do you know that?

15 A. We have a team of review  
16 coordinators who manage reviewers.

17 Q. And what do those reviewers do?

18 A. The reviewers review content  
19 uploaded to Shutterstock.

20 Q. Why?

21 MS. LACKMAN: Objection to the  
22 extent it calls for disclosure of legal  
23 information or legal advice. If you have  
24 an understanding that doesn't come from  
25 counsel, you can answer.

1 A. ZAMBROWSKI

2 A. The reviewers review content for  
3 different types of technical issues, whether  
4 that be noise, subject matter. They also  
5 review the contributor's uploaded  
6 descriptions and metadata, if there is any  
7 issues within those whether that be  
8 absurdities or curse words or language that's  
9 improper.

10 Q. So, if, for example, there are curse  
11 words that are improper, will Shutterstock  
12 reject and not display the photographs?

13 A. To the best of my knowledge, yes.

14 Q. So is it fair to say that the re-  
15 viewers will look at the uploaded photography  
16 and decided which of that photography can go  
17 on the website?

18 MS. LACKMAN: Objection, misstates  
19 testimony and foundation.

20 A. Yes. As we have a specific standard  
21 we want to employ with our content being up-  
22 loaded, it gives a better customer experience  
23 instead of having any piece of content up-  
24 loaded.

25 Q. Do you have an estimation of what

1 A. ZAMBROWSKI

2 percentage of the content is rejected as  
3 violating the standards?

4 MS. LACKMAN: Objection, foundation,  
5 outside the scope.

6 A. I do not.

7 Q. Do you know if it's more than ten  
8 percent?

9 A. I do not know.

10 Q. But you're certainly aware of  
11 Shutterstock rejecting certain photographs,  
12 correct?

13 A. Correct.

14 Q. And you said earlier there is a  
15 standard. Is that standard set out in a  
16 written guideline or a written policy?

17 MS. LACKMAN: Objection to the  
18 extent misstates testimony.

19 A. Yes. All reviewers are trained  
20 within -- and also we have internal reviewer  
21 guidelines that display specific uses,  
22 examples.

23 Q. Can you describe for me what the re-  
24 viewer guidelines are.

25 A. It is a database that stores

1 A. ZAMBROWSKI

2 policies created by Shutterstock in order to  
3 train and teach our reviewers.

4 Q. Are the reviewers to reference those  
5 guidelines when deciding whether or not to  
6 approve a photograph for display on the  
7 Shutterstock site?

8 MS. LACKMAN: Objection, outside the  
9 scope.

10 A. Correct.

11 Q. Have you yourself ever seen these  
12 guidelines?

13 A. Yes.

14 Q. Do you have a copy of those  
15 guidelines?

16 MS. LACKMAN: Objection, vague.

17 A. I personally do not have a copy of  
18 the guidelines as they are on an internal  
19 website only accessible by certain  
20 individuals.

21 Q. Do you have access to the  
22 guidelines?

23 A. Yes.

24 Q. When was the last time you looked at  
25 the guidelines?

1 A. ZAMBROWSKI

2 A. I do not know exactly.

3 Q. So is it fair to say as you sit here  
4 today that you don't recall taking any steps  
5 in response to that demand letter other than  
6 reviewing the demand letter?

7 MS. LACKMAN: Objection, misstates  
8 the testimony.

9 Q. Go ahead.

10 A. No. I definitely have talked with  
11 my manager at that time and also individuals  
12 on my team about how to approach this matter.

13 Q. Who did you speak with?

14 A. With Andrew Raff and Heather  
15 Shimmin.

16 Q. And you spoke with them in regard to  
17 the claim that was set forth in the demand  
18 letter that you referenced?

19 A. To the best of my knowledge, yes.

20 Q. And what was the substance of that  
21 conversation?

22 MS. LACKMAN: Objection to the  
23 extent that it reveals communications and  
24 advice with counsel. Mr. Raff is  
25 in-house attorney.

1 A. ZAMBROWSKI

2 Q. Go ahead.

3 A. I do not know exactly.

4 Q. Do you recall anything about any of  
5 the conversations that you may have had at  
6 that time?

7 A. I do not remember.

8 Q. Do you recall doing anything else in  
9 response to the demand letter?

10 MS. LACKMAN: Objection, foundation.

11 A. I do not remember.

12 Q. Do you know if the image is still on  
13 Shutterstock's website today?

14 A. It is not on Shutterstock's website  
15 today.

16 Q. How do you know?

17 A. Because I took action and suspended  
18 the content after the review with my team  
19 about the documentation provided.

20 Q. To your knowledge, does, quote,  
21 suspending the content delete the content  
22 from the Shutterstock system?

23 MS. LACKMAN: Objection to the  
24 extent misstates prior testimony.

25 A. To the best of my knowledge, it is

1 A. ZAMBROWSKI

2 removed from any public facing, but it's kept  
3 internally, so if anyone else tries to upload  
4 that similar piece of content, we can flag it  
5 instantly and reject that content from ever  
6 being on Shutterstock. Also, we have an  
7 obligation to a contributor's TOS where the  
8 content remains on our servers for a short  
9 period of time.

10 Q. So is it fair to say that the  
11 photograph alleged to be infringed in this  
12 case is still on the Shutterstock system even  
13 today?

14 MS. LACKMAN: Objection, vague as to  
15 system.

16 A. Personally, I don't believe so, to  
17 the best of my knowledge.

18 Q. Is it Shutterstock's position that  
19 its partners have also removed the photograph  
20 that's claimed to be infringed in this case?

21 MS. LACKMAN: Objection, no  
22 foundation.

23 A. What partners?

24 Q. Any of the partner sites that we  
25 referenced earlier.

1 A. ZAMBROWSKI

2 A. Yes. That's exactly what I just  
3 said.

4 Q. How long have you been using that at  
5 Shutterstock?

6 A. Personally, I've seen it in use my  
7 whole time at Shutterstock.

8 Q. And if it returns a match on this  
9 pixel comparison, what will Shutterstock do  
10 in regards to the contributor?

11 MS. LACKMAN: Objection, outside the  
12 scope, vague.

13 A. If there are matches that appear  
14 that aren't within the same contributor up-  
15 loading, we would reject that piece of  
16 content, and if they are a repeat offender of  
17 this type of action, we'll disable their  
18 content and send them information of why  
19 their account is disabled.

20 Q. How many infringing photographs does  
21 a contributor have to upload before they are  
22 deemed a repeat offender by Shutterstock?

23 MS. LACKMAN: Objection, misstates  
24 the testimony, no foundation.

25 Q. Go ahead.

1 A. ZAMBROWSKI

2 A. It varies, between one and three.

3 Q. So is it fair to say that if a  
4 contributor uploaded three infringing  
5 photographs, they would be deemed a repeat  
6 offender?

7 MS. LACKMAN: Objection, no  
8 foundation, calls for a legal  
9 interpretation.

10 Q. Go ahead.

11 A. Correct. We would review that  
12 portfolio and determine to terminate the user  
13 or not.

14 Q. And what would you look at to  
15 determine whether or not to terminate the  
16 user?

17 MS. LACKMAN: Objection to the  
18 extent this calls for any understanding  
19 that you have from counsel.

20 Q. Go ahead.

21 A. We would review what type of  
22 contributor they are. We have business units  
23 that upload content that are authorized by  
24 other individuals to store and upload their  
25 content. We also have aggregators who do

1 A. ZAMBROWSKI

2 similar work. So we would have to make sure  
3 that these individuals are aware of what  
4 they're doing.

5 Q. What about for individuals?

6 MS. LACKMAN: Objection, vague.

7 A. For individuals, we would most  
8 likely terminate them.

9 Q. Is there any reason why you wouldn't  
10 terminate a contributor who uploaded three or  
11 more infringing images?

12 MS. LACKMAN: Objection, calls for  
13 speculation, calls for a legal  
14 conclusion.

15 A. Other than the reasons I previously  
16 mentioned, no.

17 Q. And is it the position of  
18 Shutterstock that they will terminate the  
19 user upon that number of infringing uploads  
20 or that they'll suspend the user's account?

21 MS. LACKMAN: Objection, compound,  
22 calls for a legal interpretation,  
23 misstates testimony.

24 Q. Go ahead.

25 A. I'm not sure what you mean by

1 A. ZAMBROWSKI

2 disabling an account and deleting an account?

3 MS. LACKMAN: Objection, calls for  
4 speculation, asked and answered.

5 Q. Go ahead.

6 A. It's just different terminology.

7 Q. So is it the same thing?

8 MS. LACKMAN: Objection, asked and  
9 answered, badgering. Are you suggesting  
10 my client should delete evidence, Scott?

11 Q. Go ahead.

12 A. I don't know.

13 (Whereupon, recess was taken.)

14 MR. BURROUGHS: Let's go back on the  
15 record.

16 Q. And you understand, Artur, you're  
17 still under oath?

18 A. Yes, correct.

19 Q. Did you get a chance to talk to your  
20 counsel on the break?

21 A. Yes.

22 Q. And you're ready to testify again,  
23 you can still give your best testimony?

24 A. Correct.

25 Q. Can you tell me in your own words,

1 A. ZAMBROWSKI

2 what does Shutterstock do?

3 MS. LACKMAN: Objection, vague.

4 A. Shutterstock is a content licensing  
5 platform.

6 Q. So is it fair to say that  
7 Shutterstock is in the business of licensing  
8 photography to third parties?

9 A. Correct.

10 Q. And does Shutterstock receive  
11 payment for those licenses?

12 MS. LACKMAN: Objection, vague.

13 A. Correct.

14 Q. Does Shutterstock have a standard  
15 fee that it charges or a single standard fee  
16 that it charges or a range of fees that it  
17 charges for licenses?

18 MS. LACKMAN: Objection, compound.

19 A. To the best of my knowledge, a range  
20 of fees, depending on our obligation or the  
21 demands.

22 Q. Is it fair to say that the fees also  
23 reflect the types of uses that Shutterstock  
24 permits under the particular license?

25 MS. LACKMAN: Objection to the

1 A. ZAMBROWSKI

2 Q. Does Shutterstock license out any  
3 photography that it owns the copyrights for?

4 A. Shutterstock was actually created by  
5 Jon Oringer, who uploaded his own content to  
6 be the first pieces of content to be able to  
7 be licensed.

8 Q. Other than Jon's content, does  
9 Shutterstock license out any of its own  
10 photography?

11 MS. LACKMAN: Objection, vague to  
12 the extent it calls for a legal  
13 interpretation.

14 Q. Go ahead.

15 A. To the best of my knowledge, we do  
16 have some agreements where we've wholly owned  
17 the pieces of content and licensed them to  
18 personal contributor accounts.

19 Q. Does Shutterstock distinguish in its  
20 system between copyright artwork that it owns  
21 and copyright artwork that its contributors  
22 upload?

23 MS. LACKMAN: Objection, foundation,  
24 outside the scope.

25 A. Could you rephrase the question?

1 A. ZAMBROWSKI

2 Q. Sure. Is there any way to know from  
3 looking in the Shutterstock system whether a  
4 particular piece of content is content for  
5 which Shutterstock owns the copyrights as  
6 opposed to a third party?

7 A. What system, internally, externally?

8 Q. Any system.

9 A. Externally, no. The individuals  
10 create user names based on their own  
11 preferences and these user names are not  
12 distinctive -- they could be, it could not be  
13 I'm not a hundred percent certain.  
14 Internally, yes, we can look at whoever it is  
15 because we need to store that information.

16 Q. So I'm a visitor to the Shutterstock  
17 site and I'm looking for photographs of  
18 sunsets, I'm widely served sunset photography  
19 by outside contributors and sunset  
20 photography for which Shutterstock owns the  
21 copyrights?

22 MS. LACKMAN: Objection, outside the  
23 scope, calls for speculation.

24 A. Potentially.

25 Q. Is there any way for me to know as a

1 A. ZAMBROWSKI

2 viewer that a particular photograph is a  
3 Shutterstock owned photograph as opposed to a  
4 third-party photograph?

5 A. To the best of my knowledge, no.

6 Q. Does Shutterstock charge the same  
7 fees for third-party content and its own  
8 content?

9 MS. LACKMAN: Objection, outside the  
10 scope.

11 A. What fees?

12 Q. License fees.

13 A. As mentioned, they charge different  
14 license fees depending on the license  
15 obtained.

16 Q. Understood. But does that vary  
17 based on whether or not it's third-party  
18 content as opposed to Shutterstock owned  
19 content?

20 MS. LACKMAN: Objection, outside the  
21 scope.

22 A. To the best of my knowledge, no.

23 Q. Going back to the time period that  
24 Shutterstock maintains on its system a copy  
25 of an allegedly infringing image, can you

1 A. ZAMBROWSKI

2 Shutterstock photography have access to the  
3 copy of the photograph that's not public  
4 facing, that's maintained by Shutterstock  
5 forever?

6 MS. LACKMAN: Objection, calls for  
7 speculation, vague.

8 A. No, they do not.

9 MS. LACKMAN: Also misstates  
10 testimony. He testified -- just  
11 misstates testimony.

12 Q. In April of 2021, did Shutterstock  
13 have a DMCA agent?

14 MS. LACKMAN: Objection to the  
15 extent it calls for a legal  
16 interpretation.

17 A. I'm not sure of the question.

18 Q. Have you ever heard the term DMCA  
19 agent before?

20 A. Yes.

21 Q. What's your understanding of that  
22 phrase?

23 A. I do not have an understanding.  
24 I've seen the phrase before, though.

25 Q. So as you sit here today, is it fair

1 A. ZAMBROWSKI

2 to say that you don't know whether or not  
3 Shutterstock had a DMCA agent in 2021?

4 MS. LACKMAN: Objection, misstates  
5 the testimony, asked and answered, calls  
6 for a legal interpretation.

7 A. I do not recall.

8 Q. Do you know if Shutterstock ever had  
9 a DMCA agent?

10 A. Yes -- I believe so.

11 Q. Do you know when that started?

12 A. No, I do not.

13 Q. Do you know if Shutterstock  
14 currently has a DMCA agent?

15 A. To the best of my knowledge, I  
16 believe we do not.

17 Q. How does Shutterstock generate  
18 revenue aside from the licenses that we  
19 discussed?

20 MS. LACKMAN: Objection, outside the  
21 scope, vague.

22 A. I don't know. I'm not a sales  
23 individual.

24 Q. Are you involved in making  
25 photographs accessible to users of the site?

1 A. ZAMBROWSKI

2 the company?

3 A. I do not.

4 Q. Did Ms. Lee or Mr. Nash have roles  
5 similar to the roles you had as the  
6 contractor or agent?

7 MS. LACKMAN: Objection, vague.

8 A. I do not know.

9 Q. How do you know that they also re-  
10 viewed the DMCA notices?

11 A. Because at the time, they were  
12 working for the IP team with Sajal, and Sajal  
13 was the individual who was training me to be  
14 part of the team, and therein lies what their  
15 responsibilities were.

16 Q. Have you ever worked at Shutterstock  
17 with an individual named Cash Hamm?

18 A. Personally, no, I don't know.

19 Q. You never heard that name before,  
20 right?

21 A. I don't believe so.

22 Q. And Shutterstock, does it have any  
23 photographers as employees?

24 MS. LACKMAN: Objection to the  
25 extent it calls for a legal

1 A. ZAMBROWSKI

2 Shutterstock's website.

3 Q. As you testified before,  
4 Shutterstock will accept some content and  
5 will reject other content, correct?

6 MS. LACKMAN: Objection.

7 A. Correct.

8 Q. And as you review these guidelines,  
9 and we're happy to scroll down again if you'd  
10 like, do they accurately reflect  
11 Shutterstock's policies and procedures?

12 MS. LACKMAN: Objection to the  
13 extent it calls for a legal  
14 interpretation.

15 A. To the best of my personal  
16 knowledge, yes.

17 Q. Let's look at the Review Guidelines  
18 section, do you see that?

19 A. Yes.

20 Q. Are the five bullet points in that  
21 section the five bullet points that  
22 Shutterstock reviews content for in  
23 contemplation of displaying material on its  
24 website?

25 A. To the best of my knowledge, yes.

1 A. ZAMBROWSKI

2 Q. So, for example, Shutterstock's re-  
3 viewers will review a particular photograph's  
4 lighting, focus and noise before deciding  
5 whether or not to publish it on the website,  
6 correct?

7 A. They would not only look at those  
8 factors; there are four other bullet points  
9 that they would review.

10 Q. Understood. But that's one area of  
11 subject matter that they would review before  
12 approval, correct?

13 A. Correct.

14 Q. And Shutterstock's team and  
15 employees, before approving a photograph,  
16 will look at the metadata, such as the title  
17 and key words, before approving a photograph  
18 for display on its site, correct?

19 A. That is metadata that is inputted by  
20 the contributor.

21 Q. And what does it do when it reviews  
22 the metadata before approving it for display  
23 on its site?

24 MS. LACKMAN: Objection, misstates  
25 testimony.

1 A. ZAMBROWSKI

2 A. Can you rephrase the question?

3 Q. Sure. What does it look for in the  
4 metadata when it's deciding whether or not to  
5 approve it for use on the site?

6 MS. LACKMAN: Objection, vague. Do  
7 you mean if the metadata is photographed?

8 Q. Go ahead.

9 MS. LACKMAN: If you understand.

10 (Simultaneous talk)

11 A. To scope for relevance within the  
12 metadata; so if you are submitting a picture  
13 of a nine, you are not putting a bar in the  
14 metadata.

15 Q. Does Shutterstock maintain that  
16 metadata when it makes the photograph  
17 available for use on its website?

18 MS. LACKMAN: Objection, vague.

19 Q. What do you mean by maintain?

20 A. Keep it.

21 MS. LACKMAN: Same objection.

22 A. That metadata is viewable within our  
23 internal source and also when it is public.

24 Q. So Shutterstock never removes the  
25 metadata from the uploaded photograph when it

1 A. ZAMBROWSKI

2 offers it for license on its website,  
3 correct?

4 MS. LACKMAN: Objection, no  
5 foundation, vague, misstates the  
6 testimony.

7 A. No, that is incorrect. All metadata  
8 is stripped before uploading -- at the time  
9 of uploading, the full metadata is stripped  
10 from the content itself, and users are  
11 advised to input their own metadata. This is  
12 just for consistency factors. Not every  
13 single piece of camera or piece of video  
14 equipment has the same format. Also, there  
15 are times where they have location base  
16 within that metadata. We don't want  
17 individuals to be -- to basically protect  
18 individuals from being stalked or found out.

19 Q. So is it fair to say that  
20 Shutterstock strips or removes the metadata  
21 from the photographs when they're uploaded to  
22 the Shutterstock platform?

23 A. To the best of my knowledge, yes.

24 MS. LACKMAN: Objection, misstates  
25 testimony.

1 A. ZAMBROWSKI

2 A. I mentioned this one before, the  
3 external buildings, internal buildings,  
4 clothing, the branding.

5 Q. What will Shutterstock look for when  
6 deciding whether or not to display content  
7 based on there being, quote, unquote, similar  
8 content?

9 MS. LACKMAN: Objection, vague. To  
10 the extent there is legal analysis  
11 wrapped up in this, please refrain to  
12 discuss. If there isn't, then you can  
13 answer.

14 A. It's the content that is taking the  
15 same picture but rotating the camera slightly  
16 and slightly and it's uploading every single  
17 one of those. It is offloading user  
18 experience, in my personal opinion.

19 Q. Shutterstock will make that decision  
20 at its discretion and reject the content?

21 MS. LACKMAN: Objection, misstates  
22 the testimony.

23 A. To the best of my personal  
24 knowledge, yes.

25 Q. Does Shutterstock have complete

1 A. ZAMBROWSKI

2 discretion of what gets published on its  
3 site?

4 MS. LACKMAN: Objection, calls for a  
5 legal interpretation, asked and answered.

6 A. To the best of my personal  
7 knowledge, yes, we have a certain threshold  
8 that we try to uphold as to keep our  
9 contributors more engaged and our customers  
10 happy.

11 Q. So when you're looking at content to  
12 see if it violates your, quote, standing  
13 policy, which would require rejection, what  
14 are you looking for?

15 MS. LACKMAN: Objection, outside the  
16 scope, calls for speculation.

17 A. That could be a number of things.  
18 As I mentioned, taking the same frame and  
19 just rotating your camera over and over and  
20 uploading five through a hundred of those  
21 same images.

22 Q. So folks try to upload Spam content  
23 on Shutterstock from time to time, correct?

24 MS. LACKMAN: Objection, vague.

25 A. To the best of my personal

1 A. ZAMBROWSKI

2 knowledge, yes.

3 Q. And Shutterstock will reject that  
4 Spam content, correct?

5 A. Correct.

6 Q. That Spam content never shows up on  
7 the Shutterstock website, correct?

8 MS. LACKMAN: Objection, calls for  
9 speculation.

10 A. Correct.

11 Q. And that holds true for all of the  
12 five bullet points that we just discussed, if  
13 the submitted contents aren't in line with  
14 Shutterstock guidelines, Shutterstock will  
15 reject the content, correct?

16 MS. LACKMAN: Objection, calls for  
17 speculation.

18 A. To the best of my personal  
19 knowledge, yes.

20 Q. Are you aware of Shutterstock's  
21 technical and metadata standards?

22 MS. LACKMAN: Objection, vague. Can  
23 you refer to a document?

24 Q. Go ahead.

25 A. I am not.

1 A. ZAMBROWSKI

2 limit, Scott. So any recollection of how  
3 you know --

4 MR. BURROUGHS: Are you finished?

5 If you want to add anything else, go  
6 ahead, but if you're finished, the  
7 witness can answer the question.

8 Q. Go ahead.

9 A. Could you rephrase the question?

10 Q. Sure. Given that you're not a re-  
11 viewer, how do you know that Shutterstock  
12 reviewers are thoroughly trained on  
13 Shutterstock's technical and metadata  
14 standards, as well as compliance policies?

15 A. Because as I mentioned, our review  
16 coordinators' main responsibility is  
17 educating our reviewers on our technical and  
18 metadata standards. They are audited, they  
19 are trained, they're given feedback  
20 questions, they are reliant individuals.

21 Q. Did they tell you, those  
22 coordinators, that they trained the  
23 reviewers?

24 MS. LACKMAN: Objection. This is  
25 outside the scope as harassing. Mr.

1 A. ZAMBROWSKI

2 Zambrowski, please don't answer the  
3 question. This is badgering. This is  
4 classic badgering.

5 Q. Are you going to take your  
6 attorney's advice?

7 MS. LACKMAN: You're asking a  
8 30(b)(6) witness how they know everything  
9 they know, the witness is working for the  
10 company for five years. That's  
11 badgering, that's classic badgering. I'm  
12 really ready to call the judge if you're  
13 going to continue going down this line.

14 Q. Are you going to take your  
15 attorney's advice?

16 A. Yes, I am.

17 Q. Did you ever personally see the  
18 coordinators training the reviewers, as we've  
19 discussed?

20 MS. LACKMAN: Objection, harassment.  
21 You can answer if you wish.

22 A. In a personal capacity, yes, I have.

23 Q. Other than what you told me so far,  
24 do you have any other personal knowledge  
25 relating to how the reviewers were trained on

1 A. ZAMBROWSKI

2 A. To the best of my knowledge, yes.

3 Q. So is it Shutterstock that adds the  
4 watermark to third party content?

5 MS. LACKMAN: Objection, asked and  
6 answered, vague.

7 A. Yes, to the best of my knowledge.

8 Q. Looking at the bullet point below  
9 that, We reserve the right to remove any  
10 previously accepted content submission; do  
11 you see that?

12 A. Correct.

13 Q. Does that accurately reflect your  
14 understanding that Shutterstock has complete  
15 control over the content in its library?

16 MS. LACKMAN: Objection, calls for a  
17 legal conclusion, vague and calls for  
18 legal interpretation. You need to define  
19 control.

20 Q. Go ahead.

21 MS. LACKMAN: If you understand the  
22 question.

23 A. Yes, that's correct, that goes with  
24 any content where you upload content that  
25 they fully reserve their rights to remove

1 A. ZAMBROWSKI

2 content submitted by an individual.

3 Q. The individual has no say whether or  
4 not Shutterstock accepts or removes the  
5 content, right?

6 MS. LACKMAN: Objection, vague.

7 Q. Let me rephrase the question. The  
8 contributor of the content has no say in  
9 whether or not Shutterstock accepts or  
10 removes the content, correct?

11 MS. LACKMAN: Objection, vague.

12 A. Individuals can appeal content being  
13 removed through the HMCA counter notice.

14 Q. But it's Shutterstock that has the  
15 final say as to whether or not a photograph  
16 is going to appear on its website?

17 MS. LACKMAN: Objection, asked and  
18 answered, calls for a legal conclusion.

19 A. To the best of my personal  
20 knowledge, yes.

21 Q. In fact, can Shutterstock remove any  
22 photograph from its website at any time for  
23 any reason?

24 MS. LACKMAN: Objection, vague, no  
25 foundation.

1 A. ZAMBROWSKI

2 A. For the contributor TRS, we make it  
3 abundantly clear that we are able to remove  
4 content for any reason.

5 Q. And you can do so even if a counter  
6 notification is submitted, correct?

7 MS. LACKMAN: Objection, calls for a  
8 legal interpretation. Actually, calls  
9 for disclosure of legal information, it's  
10 privileged. Please don't answer.

11 Q. You're going to accept your  
12 attorney's advice there?

13 A. Yes, I'm going to take my attorney's  
14 advice.

15 Q. It also indicates on this page that  
16 you protect user content. How do you do that  
17 at Shutterstock?

18 A. We protect user content by applying  
19 a watermark on top of that content so it  
20 cannot be easily obtained by any nefarious  
21 individual.

22 Q. Do you take any other steps?

23 A. To the best of my personal  
24 knowledge, no.

25 Q. We're going to put in front of you a

1 A. ZAMBROWSKI

2 Q. Are you aware of any third-party  
3 sites, like TinEye, including advertisements  
4 from Shutterstock without Shutterstock's  
5 direction or consent?

6 MS. LACKMAN: Objection, no  
7 foundation, misstates testimony.

8 A. To the best of my personal  
9 knowledge, I do not know. I'm not a website  
10 developer or an advertiser.

11 Q. So is it more likely than not that  
12 if there is a Shutterstock advertisement on  
13 TinEye, that TinEye has a relationship with  
14 Shutterstock?

15 MS. LACKMAN: Objection, calls for  
16 speculation, no foundation.

17 A. I do not know from my personal  
18 capacity.

19 Q. Has Shutterstock ever reached out to  
20 TinEye and advised TinEye to stop displaying  
21 the image at issue in this case?

22 MS. LACKMAN: Objection, no  
23 foundation, not within the scope, asked  
24 and answered. I'm sure there are other  
25 objections.

1 A. ZAMBROWSKI

2 A. To the best of my personal  
3 knowledge, no.

4 Q. And has Shutterstock ever reached  
5 out to any third party and told them to  
6 remove the photograph at issue in this case  
7 from their website?

8 A. Can you define third party?

9 Q. Any party that's not Shutterstock.

10 A. I'm afraid I don't understand the  
11 question. Could you rephrase that?

12 Q. Sure. Has Shutterstock ever  
13 contacted any company other than Shutterstock  
14 And advised them to remove the image that's  
15 at issue in this case?

16 MS. LACKMAN: Objection, no  
17 foundation.

18 A. To the best of my personal  
19 knowledge, no.

20 Q. I'll put a document in front of you  
21 marked Steinmetz 47, which I believe is a  
22 screenshot. We're going to mark that next in  
23 line.

24 (Whereupon, Exhibit 6 was  
25 referenced.)

1 A. ZAMBROWSKI

2 photograph was displayed online via  
3 Shutterstock?

4 MS. LACKMAN: Objection. What  
5 photograph? Do you see a photograph?  
6 Maybe there is a different document that  
7 you have.

8 Q. Do you understand the question?

9 A. Please elaborate.

10 Q. Sure. Do you understand this  
11 particular photograph at issue in this case,  
12 correct, the one taken by George Steinmetz?

13 MS. LACKMAN: Objection to the  
14 characterization of photograph.

15 Q. Do you understand? We looked at it  
16 earlier. We can bring the exhibit back up  
17 and refresh your recollection if you don't  
18 remember.

19 A. Yes, I recall that earlier image.

20 Q. Other than the Shutterstock site,  
21 what other websites did that image appear as  
22 distributed via Shutterstock?

23 MS. LACKMAN: Objection, outside the  
24 scope, asked and answered.

25 A. Personally, I do not know.

1 A. ZAMBROWSKI

2 Q. If you wanted to figure that out,  
3 where would you look?

4 A. Personally, if I had to take an  
5 educated guess, I would contact the API team  
6 and see how those agreements are working and  
7 also where our content is being distributed  
8 in some capacity.

9 Q. Before your deposition today, you  
10 didn't contact anyone on the API team or at  
11 Shutterstock to see where the content at  
12 issue in this case was distributed; isn't  
13 that correct?

14 A. Personally, I did not.

15 Q. Did anybody, to your knowledge?

16 A. To the best of my personal  
17 knowledge, no one has.

18 Q. So as we sit here today, no one at  
19 Shutterstock, to your knowledge, has looked  
20 to see where the image at issue in this case  
21 was displayed online, correct?

22 MS. LACKMAN: Objection. The  
23 question is outside the scope, so if you  
24 happen to know, you can answer.

25 A. I do not know.

1 A. ZAMBROWSKI

2 A. We have a number of different  
3 licensing agreements that are now offered to  
4 customers. A standard basic one allows  
5 specific usages. An enhanced one is more  
6 compound, but our standard one is that would  
7 not include allowing the content to be used  
8 on merchandising, for example.

9 Q. Does Shutterstock offer plans that  
10 allow for a certain number of downloads per  
11 day or per week or per month?

12 MS. LACKMAN: Objection, outside the  
13 scope.

14 A. Yes.

15 Q. And is it accurate that customers  
16 choose Shutterstock because of the high  
17 quality licensed images that it offers to  
18 customers?

19 MS. LACKMAN: Objection, calls for  
20 speculation.

21 A. I personally would say yes.

22 Q. And part of that is because  
23 Shutterstock ensures that the photography  
24 that it displays for license on its website  
25 is high quality, right?

1 A. ZAMBROWSKI

2 MS. LACKMAN: Objection, vague.

3 A. I personally would agree with that.

4 Q. I'm going to put a document in front  
5 of you marked as Exhibit 11.

6 (Whereupon, Exhibit 11 was  
7 referenced.)

8 Q. And while she's putting that up,  
9 does Shutterstock's API serve up links to  
10 JPEG files that it provides that API to third  
11 parties?

12 A. I'm sorry, I don't understand.

13 Q. Have you worked at all with  
14 Shutterstock's API?

15 A. Personally, I did not.

16 Q. Do you understand how Shutterstock's  
17 API works?

18 A. I basically know what it does but  
19 nothing of the working mechanisms involving  
20 how it's made.

21 Q. What's your understanding of how  
22 Shutterstock's API works?

23 MS. LACKMAN: Objection, vague.

24 A. My personal understanding of how API  
25 works is it's a system in place that allows

1 A. ZAMBROWSKI

2 MS. LACKMAN: Objection to the term  
3 APA.

4 MR. BURROUGHS: API.

5 MS. LACKMAN: And outside the scope,  
6 no foundation.

7 Q. You understand the question?

8 A. No. Could you repeat the question,  
9 please?

10 Q. Does Shutterstock's API serve up  
11 links to third parties that are connected  
12 directly to the JPEG files of Shutterstock's  
13 photography assets?

14 MS. LACKMAN: Objection, vague,  
15 outside the scope.

16 A. To the best of my understanding,  
17 yes.

18 Q. Have you seen the material in  
19 Exhibit 11 before?

20 MS. LACKMAN: Objection. Photos and  
21 ownership can be confusing, but this is  
22 way outside the scope. This has got a  
23 toxic stamp on it, I believe. It's filed  
24 on a different date. So do you mean to  
25 include this, or are we confused?

1 A. ZAMBROWSKI

2 Q. What is your understanding of what  
3 SEO is?

4 A. I just understand that's search  
5 engine optimization.

6 Q. Does Shutterstock use SEO to  
7 increase visitors to its website?

8 MS. LACKMAN: Objection, outside the  
9 scope, no foundation, misstates what SEO  
10 is.

11 A. Yes. Any website would use SEO.

12 Q. Does it use data from the images up-  
13 loaded by contributors as part of its SEO  
14 campaign?

15 MS. LACKMAN: Objection, no  
16 foundation, outside the scope.

17 A. I personally do not know.

18 Q. Does Shutterstock offer high-res  
19 images to its customers?

20 MS. LACKMAN: Objection, vague as to  
21 offer.

22 A. Shutterstock downloads high-res  
23 images.

24 Q. What API does Shutterstock have,  
25 what are they used for?

1 A. ZAMBROWSKI

2 Q. Does this exhibit indicate to you if  
3 and when this image was locked?

4 MS. LACKMAN: Can you scroll down?

5 I can't see the whole exhibit.

6 A. Yes, based on the resolved date,  
7 September 21, '22.

8 Q. And do you know if that was the  
9 first action taken in connection with the  
10 image at issue in this case?

11 MS. LACKMAN: Objection, vague.

12 A. What action?

13 Q. From this exhibit, it appears to be  
14 the locking of the image.

15 MS. LACKMAN: Objection. Is there a  
16 question?

17 A. I don't understand. Could you  
18 rephrase the question?

19 Q. Let's scroll back up. Do you see  
20 there where it indicates that the recipient  
21 of this ticket should lock the image?

22 A. Yes.

23 Q. Was that the first action taken in  
24 connection with the image at issue in this  
25 case?

1 A. ZAMBROWSKI

2 A. Yes, that's correct.

3 Q. And that Shutterstock blocked access  
4 to the public from the photograph at issue in  
5 this case at that time.

6 MS. LACKMAN: Objection, misstates  
7 testimony.

8 Q. Is that accurate?

9 A. Shutterstock blocked the capability  
10 to be licensed from its portfolio.

11 Q. It blocked public access to the  
12 photograph?

13 MS. LACKMAN: Objection, vague.

14 A. Can you define public?

15 MS. LACKMAN: Asked and answered.

16 Q. Anybody outside Shutterstock.

17 A. To the best of my knowledge, yes.

18 Q. Do you recall that the takedown  
19 notice was sent sometime in April 2021?

20 A. That sounds about right.

21 Q. Did Shutterstock give an explanation  
22 as to why the image wasn't blocked between  
23 April and September 2021?

24 MS. LACKMAN: Objection, vague as to  
25 the image.

1 A. ZAMBROWSKI

2 A. As mentioned, I don't know what  
3 locking an image refers to or what that  
4 actually means.

5 Q. Did Shutterstock have any  
6 explanation as to why it didn't take any  
7 additional action, other than what you told  
8 me so far, with suspension between April of  
9 2021 and whenever this ticket was issued?

10 MS. LACKMAN: Objection, misstates  
11 testimony, misstates documents and our  
12 records that are deliberately withheld  
13 from the witness.

14 Q. Go ahead.

15 A. The document that was provided to me  
16 in 2021 was the takedown notice or the  
17 requirement for the takedown notice to  
18 suspend content which is infringing on the  
19 copyright holder.

20 Q. So does Shutterstock have any other  
21 explanation for why it waited until  
22 September 2021 to take the action that's  
23 reflected in this exhibit?

24 MS. LACKMAN: Objection, vague,  
25 compound.

1 A. ZAMBROWSKI

2 A. I do not know personally.

3 Q. Do you know if Shutterstock ever  
4 acted on the ticket that we're looking at in  
5 Exhibit 12?

6 MS. LACKMAN: Objection, asked and  
7 answered.

8 A. As I mentioned, it says completed  
9 activity.

10 Q. So that leads you to believe it was  
11 completed?

12 A. Correct.

13 Q. You may want to scroll down, but do  
14 you know when the ticket was submitted?

15 A. Yes. It says it was created  
16 September 21, 2020.

17 Q. Let's scroll back up. Do you know  
18 who Jefferson Frazer is?

19 A. Personally, I do not.

20 Q. Have you worked with him on anything  
21 at Shutterstock?

22 A. Personally, I don't know.

23 Q. The spelling for that is  
24 J-E-F-F-E-R-S-O-N F-R-A-S-E-R, I believe. Do  
25 you have any reason to believe that

1 A. ZAMBROWSKI

2 Shutterstock assigned another ID number other  
3 than this assigned number to the photograph  
4 at issue in this case?

5 A. Shutterstock assigned a Google ID to  
6 each individual content. It does not modify  
7 the content ID, or asset ID as you put it.

8 Q. When you're referring to that number  
9 inhouse, what do you call it?

10 A. Inhouse we refer to it as asset ID,  
11 content ID, image ID, video ID.

12 Q. For a photograph, do you use asset  
13 ID?

14 A. Asset ID or image ID.

15 Q. And is it your testimony that  
16 Shutterstock does not provide that asset ID  
17 to third parties, like other websites?

18 A. To the best of my personal  
19 knowledge, yes.

20 Q. Let's look at Exhibit 6. We looked  
21 at this one before, we'll put it back up on  
22 the screen. You recall looking at this site,  
23 StockFresh?

24 A. Yes.

25 Q. The URL with the StockFresh name, do

1 A. ZAMBROWSKI

2 you see a numerical sequence at the end of  
3 the URL stream?

4 A. Yes.

5 Q. Does that appear to be the same  
6 asset ID for the photograph at issue in this  
7 case as reflected in the Shutterstock  
8 database?

9 A. Yes -- I believe so.

10 Q. Do you know, does Shutterstock have  
11 any idea where StockFresh could have attained  
12 that asset ID other than through  
13 Shutterstock?

14 MS. LACKMAN: Objection, foundation.

15 A. Personally, I believe they obtained  
16 it through Shutterstock's API.

17 Q. So is it Shutterstock's testimony  
18 that Shutterstock serves up the asset ID  
19 number through its API to third parties?

20 MS. LACKMAN: Objection, lack of  
21 foundation, misstates testimony.

22 A. To the best of my personal knowledge  
23 here, yes.

24 Q. And then, would that asset ID number  
25 appear with the Shutterstock photograph

1 A. ZAMBROWSKI

2 that's referenced by that number?

3 MS. LACKMAN: Objection, vague.

4 A. It would only appear here if the  
5 content is live on Shutterstock's platform.

6 Q. But if it was live, it would appear  
7 here?

8 MS. LACKMAN: Objection, calls for  
9 speculation.

10 A. To the best of my personal  
11 knowledge, yes.

12 Q. And if it wasn't live, it wouldn't  
13 appear on any of these third-party sites,  
14 correct?

15 MS. LACKMAN: Objection, misstates  
16 testimony.

17 A. Yes.

18 Q. Does Shutterstock allow previews of  
19 images to users?

20 MS. LACKMAN: Objection, vague as to  
21 previews.

22 A. Can you rephrase, please?

23 Q. Are you able to see the full image  
24 without being logged in?

25 A. Logged in as in what?

1 A. ZAMBROWSKI

2 Q. Logged in as a licensee or a  
3 potential customer.

4 A. Customers and licensees are able to  
5 see full images that have the Shutterstock  
6 watermark.

7 Q. Does Shutterstock allow viewers to  
8 download images without purchasing one of the  
9 memberships that we talked about earlier?

10 A. No.

11 Q. Does Shutterstock offer any plug-ins  
12 or add-ons that allow its customers to use  
13 images on its site?

14 MS. LACKMAN: Objection, vague.

15 A. Can you define what type of plug-ins  
16 you mean? Is it like a Chrome extension?

17 Q. Yes, Chrome extension would be one,  
18 something for Microsoft Suite would be  
19 another. Any plug-ins or add-ons that  
20 Shutterstock offers in connection with the  
21 images.

22 MS. LACKMAN: Vague, outside the  
23 scope.

24 A. I personally understand that we do  
25 have a few plug-ins, but I do not know what

1 A. ZAMBROWSKI

2 Q. More than a month?

3 A. I don't recall.

4 Q. Let me ask you, for Shutterstock,  
5 what is a reasonable amount of time to  
6 respond to a DMCA notice?

7 MS. LACKMAN: Objection. I'm going  
8 to instruct the witness not to answer.  
9 Calls for a legal interpretation.

10 MR. BURROUGHS: We're just going to  
11 indicate on the record that we'll be  
12 moving to eliminate and exclude any  
13 evidence of the Section 512 defense  
14 because the witness is not being allowed  
15 to answer questions on the 512 defense.

16 MS. LACKMAN: You're asking the  
17 witness to testify to what's a reasonable  
18 period of time for removal under the law.  
19 The witness is not a legal expert and  
20 he's not designated as a legal expert,  
21 nor is it a topic in your deposition  
22 notice. If you would like to point me to  
23 a topic in your deposition notice that we  
24 did not object to where it says the  
25 witness will be testifying as to what a

1 A. ZAMBROWSKI

2 reasonable period is under the law to  
3 remove the image, to consult with someone  
4 to investigate and to remove, then we can  
5 have the witness testify to that, but I  
6 don't see that in any of your deposition  
7 notice, and I believe you're asking him  
8 for an interpretation of the law that he  
9 would understand only from conversations  
10 with counsel, if he has any understanding  
11 as to what this is. You can make your  
12 motion to eliminate.

13 MR. BURROUGHS: I disagree.

14 Q. But are you going to take your  
15 attorney's advice and refuse to answer the  
16 question?

17 MS. LACKMAN: Mr. Burroughs, are you  
18 going to tell me which topic this relates  
19 to and where it says that he's supposed  
20 to talk about the reasonableness of a  
21 notice and the time and the response,  
22 especially considering that you are not  
23 showing him documents? So if you want to  
24 show me the notice that has to do with  
25 that, then we can go into it, or we can

1 A. ZAMBROWSKI

2 concur off the record as to whether he  
3 can give an answer to this question in a  
4 way that doesn't reveal privileged  
5 information.

6 Q. Are you going to take your  
7 attorney's advice and refuse to answer?

8 A. I will take my attorney's advice.

9 (Whereupon, recess was taken.)

10 MR. BURROUGHS: We're back on the  
11 record.

12 Q. Artur, you understand you're still  
13 under oath?

14 A. Yes.

15 MR. BURROUGHS: I just want to clean  
16 something up. The cease and desist  
17 letter we were looking at is to be marked  
18 Exhibit 14.

19 Q. You recall Shutterstock receiving  
20 this demand letter, correct?

21 A. Correct.

22 Q. We're going to put a document in  
23 front of you marked as Exhibit 15, STK 666.  
24 Do you recognize this document?

25 A. Yes.

1 A. ZAMBROWSKI

2 MS. LACKMAN: The screenshot is a  
3 little challenging. Do you mind  
4 scrolling back down?

5 Q. If you want to see a particular  
6 portion of the document, please let us know  
7 and we'll scroll to wherever you want to go  
8 in the document.

9 A. Yes, this is my acknowledgment to  
10 the individual who submitted the cease and  
11 desist that we've taken action.

12 Q. And that's Julia?

13 A. That's what it says.

14 Q. Here you're going by the fake name  
15 of [REDACTED] right?

16 A. It is an alias, correct.

17 Q. It indicates that [REDACTED] is on the IP  
18 team at Shutterstock, Inc.; is that correct?

19 A. Correct.

20 Q. When did you respond to Julia in  
21 connection with the cease and desist letter  
22 that was marked as Exhibit 14?

23 A. It's dated above, on May 11, 2021.

24 Q. And what are you stating to Julia in  
25 that response? And of course, going through

**Redactions per Defendant's request.**

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1 A. ZAMBROWSKI

2 the copyright holder. This was never  
3 identified within the cease and desist, let  
4 alone the cease and desist was not a standard  
5 DMCA notice.

6 Q. So it's your option that it doesn't  
7 violate those policies and guidelines; is  
8 that correct?

9 A. To the best of my personal  
10 understanding, yes.

11 Q. And Shutterstock maintaining a  
12 publicly viewable copy of the image seen in  
13 Exhibit 13 accords with Shutterstock's  
14 guidelines and policies, doesn't it?

15 MS. LACKMAN: Objection,  
16 mischaracterizes the document,  
17 mischaracterizes the law, calls for a  
18 legal conclusion, asked and answered,  
19 mischaracterizes the cease and desist  
20 letter.

21 Q. Go ahead.

22 A. Could you repeat the question?

23 Q. Sure. Maintaining a public viewable  
24 copy of the image that you see in Exhibit 13  
25 complies with Shutterstock's guidelines and

1 A. ZAMBROWSKI

2 policies, doesn't it?

3 MS. LACKMAN: Objection,  
4 mischaracterizes the document,  
5 mischaracterizes the testimony, asked and  
6 answered, argumentative.

7 Q. Go ahead.

8 MS. LACKMAN: Assumes facts not in  
9 evidence.

10 A. No, this does not.

11 Q. Why not?

12 MS. LACKMAN: Asked and answered.

13 A. My personal understanding is that  
14 the regular acknowledged JPEG form of this  
15 content was asked to be removed by the cease  
16 and desist/DMCA notice that was provided.

17 Q. Is that your entire answer?

18 A. Yes.

19 Q. Is the image in Exhibit 13 an image  
20 that Shutterstock keeps in, quote, unquote,  
21 deep storage?

22 MS. LACKMAN: Objection, vague as to  
23 image.

24 A. Yes, I believe so, to be used within  
25 our MD5 system after review, so no other

1 A. ZAMBROWSKI

2 individual would be able to upload this type  
3 of content on any third-party sites.

4 Q. So is it fair to say that  
5 Shutterstock makes visible to the public the  
6 material saved in its, quote, unquote, deep  
7 storage?

8 MS. LACKMAN: Objection, asked and  
9 answered, mischaracterizes the testimony,  
10 misstates the testimony, vague as to  
11 time.

12 A. No, it does not. It does not make  
13 these things public at all.

14 Q. Well, the photograph we're looking  
15 at in Exhibit 13 was viewable to the public  
16 in September of 2021, months after receiving  
17 the cease and desist letter, wasn't it?

18 MS. LACKMAN: Objection, asked and  
19 answered, no foundation, compound.

20 A. The cease and desist letter never  
21 identified specifically the JPEG form of this  
22 piece of content.

23 Q. And it's Shutterstock's position  
24 that because it didn't, that Shutterstock had  
25 no obligation to remove the material under

1 A. ZAMBROWSKI

2 its policies and guidelines, correct?

3 A. That would be under the DMCA, not  
4 Shutterstock's guidelines.

5 Q. What about under Shutterstock's  
6 guidelines?

7 MS. LACKMAN: Objection, outside the  
8 scope, calls for speculation, vague as to  
9 time.

10 Q. Go ahead.

11 A. I personally, under my own self,  
12 believe that this might have been a glitch.  
13 It should have been removed at the time it  
14 was suspended. A JPEG version is not easily  
15 searchable, it's not easily obtainable. It  
16 has Shutterstock's watermark and trademark  
17 visible within the content.

18 Q. Does this one also include  
19 additional watermarks and trademarks that we  
20 haven't seen on the versions that we looked  
21 at before?

22 MS. LACKMAN: Objection as to  
23 trademarks, calls for a legal conclusion.

24 A. This also shows the contributor's  
25 user name who uploaded the content.

1 A. ZAMBROWSKI

2 A. As I mentioned this is not a static  
3 document, it is constantly modified and  
4 changed. It does not hold any records.

5 Q. Did you look to see if you made a  
6 copy of the protocol sheet in connection with  
7 the infringement at issue in this case?

8 A. Yes, I have, but this is just so I  
9 don't interfere with anyone else's doing the  
10 same type of protocol. This is just to have  
11 a copy for myself for my own editing  
12 purposes.

13 Q. Do you recall selecting the tab as  
14 set forth in Exhibit 2 and including that  
15 information?

16 A. When?

17 Q. At any time in connection with the  
18 infringement at issue in this case.

19 A. Personally, within this case, I do  
20 not recall.

21 Q. Do you recall filling in the  
22 contributor display name and the other  
23 information set forth in paragraph 3 of the  
24 account termination protocol?

25 A. Personally, I do not recall.

1 A. ZAMBROWSKI

2 Q. Do you recall completing step 4 of  
3 the termination protocol?

4 A. Personally, I do not recall.

5 Q. Do you recall completing step 5?

6 A. Personally, I do not recall.

7 Q. Step 6?

8 A. I do not recall.

9 Q. Step 7?

10 A. I do not recall.

11 Q. Step 8?

12 A. I do not recall.

13 Q. Do you know if anyone at  
14 Shutterstock completed those steps in  
15 connection with the infringement at issue in  
16 this case?

17 A. I believe the account was officially  
18 terminated under Andrew Raff's advisement.

19 Q. Do you recall Mr. Raff completing  
20 the eight steps in the protocol?

21 A. I do not recall.

22 Q. Do you recall anyone at Shutterstock  
23 completing the eight steps in the protocol?

24 A. In regards to this case?

25 Q. In regard to the infringement at

1 A. ZAMBROWSKI

2 issue in this case.

3 A. No, I do not recall.

4 Q. Have you gone back to look in  
5 connection with this case or deposition to  
6 see if anyone complied with the protocol  
7 that's set forth in this exhibit?

8 A. I personally do not recall.

9 Q. And you haven't looked for evidence  
10 or asked anybody about it in advance of  
11 today's deposition, right?

12 A. Correct.

13 Q. I'm putting a document in front of  
14 you marked Exhibit 18, STK 56 and 57.

15 (Whereupon, Exhibit 18 was  
16 referenced.)

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. What's this document?

20 A. This is a contributor's Admin Mason  
21 brief.

22 Q. Do you understand that this document  
23 refers to the account for the individual  
24 Shutterstock account holder who uploaded the  
25 photograph at issue in this case?

1 A. ZAMBROWSKI

2 A. I personally don't know.

3 Q. You have no understanding as to the  
4 material in those sections, correct?

5 A. Personally, I do not.

6 Q. Do you understand that Exhibit 19  
7 relates to the approval of the image at issue  
8 in this case for display on the Shutterstock  
9 website?

10 A. Yes.

11 Q. Do you understand that L. Benetti,  
12 whoever he or she is, on behalf of  
13 Shutterstock reviewed the content and  
14 approved it for display on the Shutterstock  
15 website?

16 A. Given the context of this document,  
17 yes.

18 Q. So does this document indicate to  
19 you that Shutterstock reviewed the photograph  
20 at issue in this case and approved it for  
21 display and offering for license on its  
22 website?

23 A. Correct.

24 Q. Who added the key words, if you  
25 know?

1 A. ZAMBROWSKI

2 Shutterstock's website for a mobile unit?

3 MS. LACKMAN: Objection, asked and  
4 answered like six hours ago.

5 Q. Go ahead.

6 A. No, I don't believe so.

7 Q. Is affiliate traffic reflected on  
8 this document, meaning traffic of yours that  
9 used the photograph at issue on third-party  
10 sites?

11 MS. LACKMAN: Objection, asked and  
12 answered.

13 A. As a Shutterstock affiliate, when a  
14 customer clicks license or use content on an  
15 affiliate site, it transfers them back to  
16 Shutterstock, so to answer your question,  
17 yes.

18 Q. But it doesn't reflect the traffic  
19 to those websites.

20 MS. LACKMAN: Objection, vague.

21 A. As a personal understanding, they do  
22 not.

23 Q. Let's look at Exhibit 20, which is  
24 STK 1 to 3.

25 (Whereupon, Exhibit 20 was

1 A. ZAMBROWSKI

2 can only assume so.

3 Q. Do you know if these terms have been  
4 amended at any time since the beginning of  
5 2021?

6 A. From my personal understanding, I do  
7 not know.

8 Q. But you understand that these API  
9 terms of service relate to these third-party  
10 sites that use Shutterstock's API?

11 A. Yes.

12 Q. Does Shutterstock have any  
13 relationship with a company named HelloRF?

14 A. From my personal understanding, yes.

15 Q. What's that relationship?

16 MS. LACKMAN: Objection to the  
17 extent it calls for a legal  
18 interpretation. If you have an  
19 understanding.

20 Q. Go ahead.

21 MS. LACKMAN: I don't want to bind  
22 you as a lawyer. You can describe it if  
23 you have an understanding. I just want  
24 to make sure that you're not a lawyer  
25 giving a legal opinion.

1 A. ZAMBROWSKI

2 A. My basic personal understanding is  
3 that it's an authorized partner of  
4 Shutterstock's.

5 Q. Does Shutterstock own the HelloRF  
6 company, in part?

7 MS. LACKMAN: Objection, calls for  
8 speculation.

9 A. Who is the parent company in  
10 question?

11 MS. LACKMAN: Outside the scope.

12 Q. Have you ever heard of a company  
13 called ZCool?

14 A. Yes, I personally have.

15 Q. Who is ZCool?

16 A. From my personal basic  
17 understanding, it's another Shutterstock  
18 authorized partner.

19 Q. Do you know if Shutterstock invested  
20 in ZCool?

21 MS. LACKMAN: Objection, vague.

22 A. I personally do not know.

23 Q. Your understanding, though, is that  
24 there is some sort of partnership between the  
25 two?

## C E R T I F I C A T E

STATE OF NEW YORK)

SS. : )

COUNTY OF KINGS )

I, SARA FREUND, CSR, a Notary Public  
within and for the State of New York, do  
hereby certify:

THAT ARTUR ZAMBROWSKI, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand on this 28th day of July, 2022.

*Dan Friend*

SARA FREUND, CSR